



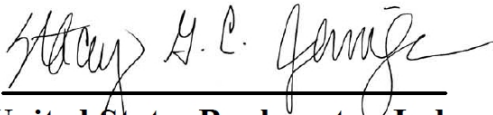
CLERK, U.S. BANKRUPTCY COURT  
NORTHERN DISTRICT OF TEXAS

**ENTERED**

THE DATE OF ENTRY IS ON  
THE COURT'S DOCKET

**The following constitutes the ruling of the court and has the force and effect therein described.**

**Signed December 16, 2021**

  
United States Bankruptcy Judge

**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

In re:

HIGHLAND CAPITAL MANAGEMENT, L.P.,<sup>1</sup>

Reorganized Debtor.

MARC S. KIRSCHNER, AS LITIGATION TRUSTEE  
OF THE LITIGATION SUB-TRUST,

Plaintiff,

v.

JAMES D. DONDERO; MARK A. OKADA; SCOTT  
ELLINGTON; ISAAC LEVENTON; GRANT JAMES  
SCOTT III; FRANK WATERHOUSE; STRAND  
ADVISORS, INC.; NEXPOINT ADVISORS, L.P.;  
HIGHLAND CAPITAL MANAGEMENT FUND  
ADVISORS, L.P.; DUGABOY INVESTMENT TRUST  
AND NANCY DONDERO, AS TRUSTEE OF

Chapter 11

Case No. 19-34054-sgj11

Adv. Pro. No. 21-03076-sgj

<sup>1</sup> The last four digits of the Reorganized Debtor's taxpayer identification number are (8357). The Reorganized Debtor is a Delaware limited partnership. The Reorganized Debtor's headquarters and service address are 100 Crescent Court, Suite 1850, Dallas, TX 75201.

DUGABOY INVESTMENT TRUST; GET GOOD TRUST AND GRANT JAMES SCOTT III, AS TRUSTEE OF GET GOOD TRUST; HUNTER MOUNTAIN INVESTMENT TRUST; MARK & PAMELA OKADA FAMILY TRUST – EXEMPT TRUST #1 AND LAWRENCE TONOMURA AS TRUSTEE OF MARK & PAMELA OKADA FAMILY TRUST – EXEMPT TRUST #1; MARK & PAMELA OKADA FAMILY TRUST – EXEMPT TRUST #2 AND LAWRENCE TONOMURA IN HIS CAPACITY AS TRUSTEE OF MARK & PAMELA OKADA FAMILY TRUST – EXEMPT TRUST #2; CLO HOLDCO, LTD.; CHARITABLE DAF HOLDCO, LTD.; CHARITABLE DAF FUND, LP.; HIGHLAND DALLAS FOUNDATION; RAND PE FUND I, LP, SERIES 1; MASSAND CAPITAL, LLC; MASSAND CAPITAL, INC.; SAS ASSET RECOVERY, LTD.; AND CPCM, LLC,

Defendants.

**ORDER APPROVING STIPULATION AND PROPOSED INITIAL RESPONSE AND  
BRIEFING SCHEDULE**

Upon consideration of the *Stipulation and Proposed Initial Response and Briefing Schedule* [Docket No. 20] (the “Initial Response and Briefing Stipulation”),<sup>2</sup> by and among Marc S. Kirschner, as Litigation Trustee of the Litigation Sub-Trust (the “Trustee”), and James D. Dondero; Mark A. Okada; Scott Ellington; Isaac Leventon; Grant James Scott III; Frank Waterhouse; Strand Advisors, Inc.; NexPoint Advisors, L.P. Highland Capital Management Fund Advisors, L.P.; Dugaboy Investment Trust and Nancy Dondero, as Trustee of Dugaboy Investment Trust; Get Good Trust and Grant James Scott III, As Trustee of Get Good Trust; Hunter Mountain Investment Trust; Mark & Pamela Okada Family Trust – Exempt Trust #1 and Lawrence Tonomura, as Trustee of Mark & Pamela Okada Family Trust – Exempt Trust #1; Mark & Pamela Okada Family Trust – Exempt Trust #2 and Lawrence Tonomura, as Trustee of Mark & Pamela

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<sup>2</sup> Capitalized terms not otherwise defined in this Order shall have the meanings ascribed to them in the Stipulation.

Okada Family Trust – Exempt Trust #2; CLO Holdco, Ltd.; Charitable DAF Holdco, Ltd.; Charitable DAF Fund, L.P.; Highland Dallas Foundation; Rand PE Fund I, LP, Series 1; Massand Capital, LLC; Massand Capital, Inc.; and CPCM, LLC (each, a “Defendant” and collectively, the “Defendants,” and with the Trustee, the “Parties”), it is **HEREBY ORDERED THAT:**

1. This Initial Response and Briefing Stipulation, a copy of which is attached hereto as **Exhibit A**, is **APPROVED**.

2. The Initial Response and Briefing Stipulation shall become effective immediately upon entry of this Order.

3. The Parties shall adhere to the following deadlines, as set forth in the Initial Response and Briefing Stipulation.

| <b>Event</b>   | <b>Deadline</b>   |
|--|-------------------|
| Deadline for each Defendant to answer or otherwise move against the Complaint shall be February 21, 2022   | February 21, 2022 |
| Deadline for the Trustee to file an opposition to any motion filed by the Defendant(s) in response to the Complaint                                | June 21, 2022     |
| Deadline for each Defendant to file a reply to the Trustee’s filing in opposition to any motion filed by Defendant(s) in response to the Complaint | August 15, 2022   |

4. Plaintiff shall be permitted to amend his complaint as a matter of course under Fed. R. Civ. P. 15 and Fed. R. Bankr. P. 7015 on or prior to April 19, 2022. In the event that Plaintiff amends his complaint pursuant to this provision, the Parties will negotiate in good faith regarding a schedule for answers to and motions to dismiss the amended complaint that is commensurate in scope with the amendment; provided, however, that Defendants shall be afforded at least 45 days to answer or otherwise move against the amended complaint.

5. The deadlines set forth in the Initial Response and Briefing Stipulation shall only be modified in a writing signed by the Parties or upon the entry of an order of the Court entered upon notice to the Parties.

6. The Court shall retain jurisdiction over all disputes arising out of or otherwise concerning the interpretation and enforcement of the Initial Response and Briefing Stipulation and this Order.

###End of Order###

# EXHIBIT A

**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

In re:

HIGHLAND CAPITAL MANAGEMENT, L.P.,<sup>1</sup>

Reorganized Debtor.

MARC S. KIRSCHNER, AS LITIGATION TRUSTEE  
OF THE LITIGATION SUB-TRUST,

Plaintiff,

v.

JAMES D. DONDERO; MARK A. OKADA; SCOTT ELLINGTON; ISAAC LEVENTON; GRANT JAMES SCOTT III; FRANK WATERHOUSE; STRAND ADVISORS, INC.; NEXPOINT ADVISORS, L.P.; HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, L.P.; DUGABOY INVESTMENT TRUST AND NANCY DONDERO, AS TRUSTEE OF DUGABOY INVESTMENT TRUST; GET GOOD TRUST AND GRANT JAMES SCOTT III, AS TRUSTEE OF GET GOOD TRUST; HUNTER MOUNTAIN INVESTMENT TRUST; MARK & PAMELA OKADA FAMILY TRUST – EXEMPT TRUST #1 AND LAWRENCE TONOMURA AS TRUSTEE OF MARK & PAMELA OKADA FAMILY TRUST – EXEMPT TRUST #1; MARK & PAMELA OKADA FAMILY TRUST – EXEMPT TRUST #2 AND LAWRENCE TONOMURA IN HIS CAPACITY AS TRUSTEE OF MARK & PAMELA OKADA FAMILY TRUST – EXEMPT TRUST #2; CLO HOLDCO, LTD.; CHARITABLE DAF HOLDCO, LTD.; CHARITABLE DAF FUND, LP.; HIGHLAND DALLAS FOUNDATION; RAND PE FUND I, LP, SERIES 1; MASSAND CAPITAL, LLC; MASSAND CAPITAL, INC.; SAS ASSET RECOVERY, LTD.; AND CPCMC, LLC,

Defendants.

Chapter 11

Case No. 19-34054-sgj11

Adv. Pro. No. 21-03076-sgj

STIPULATION AND PROPOSED  
INITIAL RESPONSE AND  
BRIEFING SCHEDULING ORDER

<sup>1</sup> The last four digits of the Reorganized Debtor's taxpayer identification number are (8357). The Reorganized Debtor is a Delaware limited partnership. The Reorganized Debtor's headquarters and service address are 100 Crescent Court, Suite 1850, Dallas, TX 75201.



## **STIPULATION AND PROPOSED INITIAL RESPONSE AND BRIEFING SCHEDULE**

This stipulation and initial response and briefing schedule (the “Stipulation”) is made and entered into, subject to Court approval, in the above-captioned adversary proceeding (the “Adversary Proceeding”) by and among Marc S. Kirschner, as Litigation Trustee of the Litigation Sub-Trust (the “Trustee”), and James D. Dondero; Mark A. Okada; Scott Ellington; Isaac Leventon; Grant James Scott III; Frank Waterhouse; Strand Advisors, Inc.; NexPoint Advisors, L.P. Highland Capital Management Fund Advisors, L.P.; Dugaboy Investment Trust and Nancy Dondero, as Trustee of Dugaboy Investment Trust; Get Good Trust and Grant James Scott III, As Trustee of Get Good Trust; Hunter Mountain Investment Trust; Mark & Pamela Okada Family Trust – Exempt Trust #1 and Lawrence Tonomura, as Trustee of Mark & Pamela Okada Family Trust – Exempt Trust #1; Mark & Pamela Okada Family Trust – Exempt Trust #2 and Lawrence Tonomura, as Trustee of Mark & Pamela Okada Family Trust – Exempt Trust #2; CLO Holdco, Ltd.; Charitable DAF Holdco, Ltd.; Charitable DAF Fund, L.P.; Highland Dallas Foundation; Rand PE Fund I, LP, Series 1; Massand Capital, LLC; Massand Capital, Inc.; and CPCM, LLC (each, a “Defendant” and collectively, the “Defendants,” and with the Trustee, the “Parties”), by and through their respective undersigned counsel.<sup>2</sup> In support of the Stipulation, the Parties respectfully state as follows:

WHEREAS, on October 16, 2019, Highland Capital Management, L.P. (“HCMLP”), filed a voluntary petition for relief under title 11 of the United States Code with the United States Bankruptcy Court for the District of Delaware. The case was subsequently transferred to the Bankruptcy Court for the Northern District of Texas, Dallas Division and captioned *In re Highland Capital Management, L.P.*, Case No. 19-34054-sgj11;

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<sup>2</sup> This Stipulation is entered into without waiver of each Defendant’s right to challenge the basis for jurisdiction of the court in this case.

WHEREAS, on February 22, 2021, the Court confirmed HCMLP's *Fifth Amended Plan of Reorganization* [Docket No. 1943] (the "Plan") which, among other things, established the Litigation Sub-Trust (as defined in the Plan) for the benefit of the Claimant Trust Beneficiaries (as defined in the Plan).

WHEREAS, on October 15, 2021, the Trustee commenced the Adversary Proceeding by filing a complaint against Defendants [Docket No. 1] (the "Complaint");

WHEREAS, on October 18, 2021, the Clerk of Court for the United States Bankruptcy Court for the Northern District of Texas issued the *Summons In An Adversary Proceeding* (the "Summons") [Docket No. 3];

WHEREAS, on October 18, 2021, the Court entered the *Order Regarding Adversary Proceedings Trial Setting and Alternative Scheduling Order* (the "Order") [Docket No. 4] which, among other things, sets forth an Alternative Scheduling Order (the "Alternative Scheduling Order") that applies to the Adversary Proceeding "[i]f the [P]arties do not submit a proposed scheduling order or do not schedule a status conference with the Court to discuss the provisions and deadlines of a scheduling order within forty-five days of the filing of this [A]dversary [P]roceeding";

WHEREAS, the Parties have met and conferred as to an initial briefing schedule in the event that any party moves to dismiss the complaint, and have mutually agreed to the schedule as set forth below;

**NOW, THEREFORE**, it is hereby stipulated and agreed, and upon approval by the Court it shall be **SO ORDERED**:

1. Acceptance of Service. Each Defendant agrees that its undersigned counsel has accepted service of the Complaint and Summons on its behalf, and that it will not assert a defense



to the Complaint of insufficient service of process pursuant to Federal Rule of Civil Procedure 12(b)(5) made applicable hereto by Federal Rule of Bankruptcy Procedure 7012.

2. Applicability. This Stipulation shall apply to all Defendants, irrespective of whether the Complaint and Summons was previously served on any Defendant, or are subsequently served on any Defendant, whether in accordance with Federal Rule of Civil Procedure 4, by means of voluntary waiver or acceptance of service, or otherwise.

3. Time to Respond to Complaint and Initial Briefing Schedule. The Parties agree to the following deadlines in connection with the Defendants' responses to the Complaint:

- a. The deadline for each Defendant to answer or otherwise move against the Complaint shall be February 21, 2022 (the "Initial Response Deadline").<sup>3</sup>
- b. The deadline for the Trustee to file an opposition to any motion filed by the Defendant(s) in response to the Complaint shall be June 21, 2022;
- c. The deadline for each Defendant to file a reply to the Trustee's filing in opposition to any motion filed by Defendant(s) in response to the Complaint shall be August 15, 2022.

4. Potential Amended Complaint. Plaintiff shall be permitted to amend his complaint as a matter of course under Fed. R. Civ. P. 15 and Fed. R. Bankr. P. 7015 on or prior to April 19, 2022. In the event that Plaintiff amends his complaint pursuant to this provision, the Parties will negotiate in good faith regarding a schedule for answers to and motions to dismiss the amended complaint that is commensurate in scope with the amendment; provided, however, that Defendants shall be afforded at least 45 days to answer or otherwise move against the amended complaint. Consent to amendment under Rule 15(a) is without prejudice to the Parties' positions with respect to the effect of such amendment under Rule 15(c), all of which are expressly preserved.

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<sup>3</sup> For the avoidance of doubt, February 21, 2022 shall be the deadline for any Defendant to file a motion under Fed. R. Civ. P. 12, made applicable to this adversary proceeding under Fed. R. Bankr. P. 7012, irrespective of whether any Defendant files any other motion in response to the Complaint.

5. Proposed Scheduling Order. The Parties agree to meet and confer promptly regarding a broader proposed scheduling order in lieu of the Alternative Scheduling Order.

Dated: November 16, 2021

Respectfully submitted,

**SIDLEY AUSTIN LLP**

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-and-

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SULLIVAN LLP**

Susheel Kirpalani (admitted *pro hac vice*)  
Deborah J. Newman (admitted *pro hac vice*)  
Robert Loigman (admitted *pro hac vice*)  
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*DAF Fund, LP, and Charitable DAF Holdco, Ltd.*

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**STINSON L.L.P.**

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Pamela Okada Family Trust – Exempt Trust  
#1, and The Mark and Pamela Okada Family  
Trust – Exempt Trust #2*

**VANACOUR PERKINS PLLC**

/s/ Jason Vanacour

Jason Vanacour

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*Counsel for Massand Capital, Inc. and  
Massand Capital, LLC*

United States Bankruptcy Court  
Northern District of Texas

Kirschner,  
Plaintiff  
Dondero,  
Defendant

Adv. Proc. No. 21-03076-sgj

## CERTIFICATE OF NOTICE

District/off: 0539-3

User: admin

Page 1 of 2

Date Rcvd: Dec 17, 2021

Form ID: pdf001

Total Noticed: 4

The following symbols are used throughout this certificate:

| Symbol | Definition   |
|--------|--|
| +      | Addresses marked '+' were corrected by inserting the ZIP, adding the last four digits to complete the zip +4, or replacing an incorrect ZIP. USPS regulations require that automation-compatible mail display the correct ZIP. |

Notice by first class mail was sent to the following persons/entities by the Bankruptcy Noticing Center on Dec 19, 2021:

| Recip ID | Recipient Name and Address   |
|----------|--|
| dft      | + Highland Capital Management Fund Advisors, L.P., K&LGates LLP, c/o Stephen G. Topetzes, 1600 K Street, NW, Washington, DC 20006-2806     |
| dft      | + Hunter Mountain Investment Trust, c/o E. P. Keiffer, Rochelle McCullough, LLP, 325 North St. Paul St., Suite 4500, Dallas, TX 75201-3827 |
| dft      | + NexPoint Advisors, L.P., K&L Gates LLP, c/o Stephen G. Topetzes, 1600 K Street, NW, Washington, DC 20006-2806                            |

TOTAL: 3

Notice by electronic transmission was sent to the following persons/entities by the Bankruptcy Noticing Center.

Electronic transmission includes sending notices via email (Email/text and Email/PDF), and electronic data interchange (EDI). Electronic transmission is in Eastern Standard Time.

| Recip ID | Notice Type: Email Address                 | Date/Time            | Recipient Name and Address   |
|----------|--|----------------------|--|
| ust      | + Email/Text: ustpreion06.da.ecf@usdoj.gov | Dec 17 2021 21:24:00 | United States Trustee, 1100 Commerce Street, Room 976, Dallas, TX 75242-0996 |

TOTAL: 1

## BYPASSED RECIPIENTS

The following addresses were not sent this bankruptcy notice due to an undeliverable address, \*duplicate of an address listed above, \*P duplicate of a preferred address, or ## out of date forwarding orders with USPS.

NONE

## NOTICE CERTIFICATION

I, Joseph Speetjens, declare under the penalty of perjury that I have sent the attached document to the above listed entities in the manner shown, and prepared the Certificate of Notice and that it is true and correct to the best of my information and belief.

Meeting of Creditor Notices only (Official Form 309): Pursuant to Fed .R. Bank. P.2002(a)(1), a notice containing the complete Social Security Number (SSN) of the debtor(s) was furnished to all parties listed. This official court copy contains the redacted SSN as required by the bankruptcy rules and the Judiciary's privacy policies.

Date: Dec 19, 2021

Signature: /s/Joseph Speetjens

## CM/ECF NOTICE OF ELECTRONIC FILING

The following persons/entities were sent notice through the court's CM/ECF electronic mail (Email) system on December 17, 2021 at the address(es) listed below:

| Name               | Email Address  |
|--------------------|--|
| Melissa S. Hayward | on behalf of Debtor Highland Capital Management L.P. MHayward@HaywardFirm.com, mholmes@HaywardFirm.com |

Paige Holden Montgomery



District/off: 0539-3

User: admin

Page 2 of 2

Date Rcvd: Dec 17, 2021

Form ID: pdf001

Total Noticed: 4

on behalf of Plaintiff Marc Kirschner pmontgomery@sidley.com  
txefilingnotice@sidley.com;paige-montgomery-7756@ecf.pacerpro.com;crognese@sidley.com;ebromagen@sidley.com;efilingnotice@sidley.com

Zachery Z. Annable

on behalf of Debtor Highland Capital Management L.P. zannable@haywardfirm.com

TOTAL: 3